

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of Section 621(a)(1) of the)	MB Docket No. 05-311
Cable Communications Policy Act of 1984 as)	
amended by the Cable Television Consumer)	
Protection and Competition Act of 1992)	

**NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
INITIAL COMMENTS**

The National Telecommunications Cooperative Association (NTCA)¹ files its initial comments in response to the Federal Communications Commission's (Commission's or FCC's) Report and Order and Further Notice of Proposed Rulemaking (Order or FNPRM) regarding new competitive video franchise applications.² The Commission seeks comment on whether the competitive entrants' new video franchise application requirements created in the Order should be extended to existing video franchises as they come up for renewal.³

The Commission, in reviewing the FNPRM record, should allow rural video providers to choose whether to adopt the Commission's new competitive franchise framework or to negotiate with the LFA and create an alternative framework during the renewal process. Requiring all incumbents to adhere to the streamlined competitive rules may not be in the best interests of the

¹ NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents 575 rural rate-of-return regulated incumbent local exchange carriers (ILECs). All of its members are full service local exchange carriers, and many members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended (Act). NTCA members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

² *In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, Report and Order and Further Notice of Proposed Rulemaking (rel. Mar. 5, 2007) (Order or FNPRM).

³ Order, ¶ 140.

incumbents' rural customers as it can pre-position the negotiation teams into hard adversarial stances, rather than cooperative negotiation positions that would otherwise exist.

I. Rural Carriers Are Video Providers Who Will Be Affected By The FNPRM.

According to a recent NTCA member survey on video and broadband, 59% of the survey respondents currently offer video services to their customers, and nearly all of those video services are provided under a cable franchise agreement.⁴ Of those respondents who are not currently offering video, 38% planned to do so by year-end 2008.⁵ NTCA members provide video service using coaxial cable, fiber cable, Direct Broadcast Satellite (DBS), Open Video Systems (OVS), Digital Subscriber Line (DSL) over copper facilities and Telco-TV/Internet protocol television (IPTV). NTCA member companies serve the most rural segments of this country, where the cost and difficulty of providing service is the greatest. In many areas, NTCA member companies are the only providers of video service to these customers. As such, NTCA video service provider members and their customers have a vital interest in the outcome of the Commission's FNPRM.

II. The Competitive Entrants' New Video Franchise Rules Can Streamline Application Renewals.

The Commission's Order dramatically revises the franchise agreement landscape intended to streamline competitive entrants' applications and entry into the video market, where the competitors are expected to face competition from incumbent cable operators. The

⁴ For the last eight years, NTCA has conducted its annual Broadband/Internet/Video Availability Survey to gauge the deployment rates of advanced services (including video) by its member companies. In the late spring of 2006, NTCA sent an electronic survey form to each of the companies in NTCA's membership database; 120 members (21%) responded. The NTCA 2006 Broadband/Internet Availability Survey Report, August 2006, is available at: http://www.ntca.org/content_documents/2006%20NTCA%20Broadband%20Survey%20Report.pdf.

⁵ *Id.* at 12.

Commission revised the LFA decision time frame to permit a 90-day or 180-day maximum decision window, defined when the time frame for competitive franchise approval begins, and specified a list of information that must be contained in a competitive franchise application.⁶ Under the Order, an LFA: 1) cannot refuse to grant a competitive franchise because of unreasonable build-out mandates or obligations relating to public, educational, and government (PEG) networks; 2) must include certain specified fees as part of the statutory 5% franchise fee cap; 3) cannot refuse a competitive franchise based on non-cable services or facilities; and 4) cannot impose greater restrictions on market entry, including level-playing-field provisions, than the new rules provide.⁷

These new franchise provisions are designed to streamline competitive franchise applications for entry into the video market. The Commission enacted the new rules in part because the Commission determined that video competition and broadband deployment are linked and the speed of broadband deployment depends on the speed of video franchise application approvals.

We also conclude that broadband deployment and video entry are “inextricably linked” and that, because the current operation of the franchising process often presents an unreasonable barrier to entry for the provision of video services, it necessarily hampers deployment of broadband services. The record demonstrates that broadband deployment is not profitable without the ability to compete with the bundled services that cable companies provide.⁸

Incumbent rural video providers are already striving to meet their customers’ demands for video and broadband services, and because many of the rural providers’ managers, directors

⁶ Order, ¶¶ 67, 75; Order Appendix B.

⁷ *Id.*, ¶¶ 83, 94, 96, 110, 121, and 129.

⁸ *Id.*, ¶ 51.

and employees live within the boundaries of the LFAs in which they will seek the franchise renewal, the rural providers try very hard to meet the needs and desires of the LFAs. Unlike non-rural video providers, most NTCA members who provide incumbent video services report that they have excellent working relationships with their towns, communities and LFAs. Part of that good relationship is due to their close proximity to the LFA and the rural attitude of working together to reach a common goal.

III. Incumbent Rural Video Providers Should Choose Their Regulatory Framework.

The Commission, in reviewing the FNPRM record, should allow incumbent rural franchisees to choose whether to adopt the Commission's new competitive franchise framework or to negotiate with the LFA and create an alternate framework. Requiring all incumbents to adhere to the streamlined competitive rules may not be in the best interests of the incumbent's rural customers as it can pre-position the negotiation teams into hard adversarial stances, rather than cooperative negotiation positions that would otherwise exist.

Allowing the rural video providers to choose their framework will give rural video service providers maximum flexibility in maintaining good relationships with their local franchising authority while providing top quality video services to their customers. Several early comments filed by municipalities have already expressed their strong preference for not allowing incumbent video providers to use the competitive franchise application framework.⁹ Should a small rural video provider attempt to invoke the new competitive regime during the renewal process, the rural provider may face the same wrath as expressed in these comments. One viable

⁹ See, e.g., City of Iowa City, Iowa Comment (filed Apr. 18, 2007); Oregon Metropolitan Area Communications Commission Comment (filed Apr. 17, 2007); City of Lakeville, Minnesota Comment (filed Apr. 17, 2007); Worcester, Massachusetts Community Cable Access Comment (filed Apr. 17, 2007); and City of Pikeville, Kentucky Comment (filed Apr. 16, 2007).

outcome of such hostility at the start of negotiations is that the close-knit relationship of the LFA and rural provider will be irreparably damaged. Given the video providers' close proximity to the LFA, it may not be in either's long-term best interests (or their customers' best interests) to restrict either's negotiation positions. Incumbent rural video providers should be allowed to choose their negotiating framework.

NTCA acknowledges the wisdom of allowing the incumbent rural video provider, not the LFA, to decide whether to implement the competitive franchise application framework. Being able to assert the right to follow the competitive framework will help those few incumbent rural providers who need some assistance to complete their negotiations in a timely manner. The incumbent should be allowed to rely on the competitive entrant rules as a fall-back position at a minimum.

Rural video providers have a deep interest in rolling out broadband services and bundled packages that include video and Internet access. While there may be some circumstances where an incumbent rural video provider may benefit from selecting the new rules, there may be other circumstances where it is in the best interests of the incumbent and their customers that they adopt a framework that differ from the competitive franchise agreement scenario. It is important that incumbent rural video providers be allowed to choose their paths to providing top-notch video and broadband services to their customers. This will enhance cable competition and ensure that the Commission's goal of rapid broadband deployment in rural areas will be met by removing unreasonable barriers to renewal of incumbent video franchise applications.

IV. Conclusion.

For these reasons, the Commission should allow incumbent rural franchisees to choose whether to adopt the Commission's new competitive franchise framework or to negotiate with the LFAs and create an alternative framework. Requiring all incumbents to adhere to the streamlined competitive rules may not be in the best interests of the incumbents' rural customers as it can pre-position the negotiation teams into hard adversarial stances, rather than cooperative negotiation positions that would otherwise exist.

Respectfully submitted,

**NATIONAL TELECOMMUNICATIONS
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CERTIFICATE OF SERVICE

I, Adrienne Rolls, certify that a copy of the foregoing Initial Comments of the National Telecommunications Cooperative Association in MB Docket No. 05-311, FCC 06-180, was served on this 20th day of April 2007 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons:

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